



DEPARTMENT OF THE TREASURY

Internal Revenue Service
TE/GE EO Examinations
1100 Commerce Street
Dallas, TX 75424

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: October 30, 2009

Release Number: **201007075**

Release Date: 2/19/10

UIL Code: 501.03-00

ORG

ADDRESS

XX = DATE

ADDRESS = ADDRESS

Person to Contact:

Identification Number:

In Reply Refer to: TE/GE Review Staff

EIN

LAST DATE FOR FILING A PETITION
WITH THE TAX COURT: January 28, 201XX

CERTIFIED MAIL – Return Receipt Requested

Dear

This is a Final Adverse Determination Letter as to your exempt status under section 501(c)(3) of the Internal Revenue Code. Your exemption from Federal income tax under section 501(c)(3) of the code is hereby revoked effective January 1, 20XX.

Our adverse determination was made for the following reasons:

Organizations described in I.R.C. § 501(c)(3) and exempt under section 501(a) must be both organized and operated exclusively for exempt purposes. You have failed to produce documents or otherwise establish that you are operated exclusively for exempt purposes and that no part of your net earnings inures to the benefit of private shareholders or individuals. You failed to respond to repeated reasonable requests to allow the Internal Revenue Service to examine your records regarding your receipts, expenditures, or activities as required by I.R.C. § 6001, 6033(a)(1) and Rev. Rul. 59-95, 1959-1 C.B. 627.

Contributions to your organization are no longer deductible under section 170 of the Internal Revenue Code.

You are required to file Federal income tax returns on Form 1120. These returns should be filed with the appropriate Service Center for the year ending December 31, 20XX and for all years thereafter.

Processing of income tax returns and assessment of any taxes due will not be delayed should a petition for declaratory judgment be filed under section 7428 of the Internal Revenue Code.

If you decide to contest this determination in court, you must initiate a suit for declaratory

Judgment in the United States Tax Court, the United States Claim Court or the District Court of the United States for the District of Columbia before the 91st day after the date this determination was mailed to you. Contact the clerk of the appropriate court for the rules for initiating suits for declaratory judgment.

You also have the right to contact the office of the Taxpayer Advocate. However, you should first contact the person whose name and telephone number are shown above since this person can access your tax information and can help you get answers.

You can call and ask for Taxpayer Advocate assistance. Or you can contact the Taxpayer Advocate from the site where the tax deficiency was determined by calling, Tel: or write :

Taxpayer Advocate assistance cannot be used as a substitute for established IRS procedures, formal appeals processes, etc. The Taxpayer Advocate is not able to reverse legal or technically correct tax determinations, nor extend the time fixed by law that you have to file a petition in the United States Tax Court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,

Douglas H. Shulman
Commissioner
By

Sunita Lough
Director, EO Examinations

Enclosures:
Publication 892
Publication 1546
Notice 437

Cc:

Internal Revenue Service

Department of the Treasury

Date: 11/25/09

ORG
ADDRESS

Taxpayer Identification Number:

Form:

Tax Year(s) Ended:

Person to Contact/ID Number:

Contact Numbers:

Telephone:

Fax:

Certified Mail - Return Receipt Requested

Dear

We have enclosed a copy of our report of examination explaining why we believe revocation of your exempt status under section 501(c)(3) of the Internal Revenue Code (Code) is necessary.

If you accept our findings, take no further action. We will issue a final revocation letter.

If you do not agree with our proposed revocation, you must submit to us a written request for Appeals Office consideration within 30 days from the date of this letter to protest our decision. Your protest should include a statement of the facts, the applicable law, and arguments in support of your position.

An Appeals officer will review your case. The Appeals office is independent of the Director, EO Examinations. The Appeals Office resolves most disputes informally and promptly. The enclosed Publication 3498, *The Examination Process*, and Publication 892, *Exempt Organizations Appeal Procedures for Unagreed Issues*, explain how to appeal an Internal Revenue Service (IRS) decision. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process.

You may also request that we refer this matter for technical advice as explained in Publication 892. If we issue a determination letter to you based on technical advice, no further administrative appeal is available to you within the IRS regarding the issue that was the subject of the technical advice.

If we do not hear from you within 30 days from the date of this letter, we will process your case based on the recommendations shown in the report of examination. If you do not protest this proposed determination within 30 days from the date of this letter, the IRS will consider it to be a failure to exhaust your available administrative remedies. Section 7428(b)(2) of the Code provides, in part: "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted its administrative remedies within the Internal Revenue Service." We will then issue a final revocation letter. We will also notify the appropriate state officials of the revocation in accordance with section 6104(c) of the Code.

You have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free 1-877-777-4778 and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

If you have any questions, please call the contact person at the telephone number shown in the heading of this letter. If you write, please provide a telephone number and the most convenient time to call if we need to contact you.

Thank you for your cooperation.

Sincerely,

Renee B. Wells
Acting Director, E.O. Examinations.

Enclosures:
Publication 892
Publication 3498
Report of Examination

| | | | |
|--------------------------------------|-----------------------------|---------------------------|--|
| Form 886-A (January 1994) | EXPLANATION OF ITEMS | | Schedule number or exhibit |
| Name of taxpayer : ORG | | Tax Identification Number | Year/Period ended December 31, 20XX |

LAW:

Section 501(c)(3) of the Code provides for exemption of organizations organized and operated exclusively for charitable purposes and that no part of the earnings of which inures to the benefit of private shareholders or individuals.

Section 6033 of the Internal Revenue Code of 1954 provides that every organization exempted from taxation under Section 501(a) of the Code shall file an annual return, stating specifically the items of gross income of gross income, receipts, and disbursements, and shall keep such records, render under oath such other oath such statements, make such other returns and comply with such rules and regulations as the Secretary of the Treasury or his delegate may from time to time prescribe.

Section 1.6033-2(h)(2) of the Federal Income Tax Regulations require that every organization which has established its rights to exemption from tax shall submit such additional information as may be required by the Internal Revenue Service to further inquire into its exempt status.

Section 1.600-1(c) of the Federal Income Tax Regulations states in part, every organization exempt from tax under Section 501(a) shall keep such permanent books of account records, including inventories, as are sufficient to show specifically the items of gross income, receipts and disbursements. Such organizations shall keep such books and records as required to substantiate the information required by Section 6033.

Revenue Ruling 59-95, 1959-1 C.B. 627, describes an organization previously recognized as exempt. When requested a financial statement of its operations, the organization was unable to do so due its incomplete records. The Service concluded that failure or inability to file the required information return or otherwise to comply with Section 6033 of the Code and its implementing regulations may result in termination of its exempt status, on the grounds that the organization has not established that it is observing the conditions required for the continuation of its exempt status.

Section 1.61-1 (a) of the Federal Income Tax Regulations states gross income means all income from whatever source derived, unless excluded by law. Gross income includes income realized in any form, whether in money, property, or services. Income may be realized, therefore, in the form of services, meals, accommodations, stock, or other property, as well as in cash.

The Dual Test: Organized and Operated:

IRC 501(c)(3) requires an organization to be both “organized” and “operated” exclusively for one or more IRC 501(c)(3) purposes. If the organization fails either organizational test or the operational test, it is not exempt. Reg. 1.501(c)(3)-1(a)(1). Church of Visible Intelligence That Governs The Universe. v.U.S.4 Cl. Ct. 55.

The organizational test concerns the organization’s articles of organization or comparable governing document. The operational test concerns the organization’s activities. A deficiency in an organization’s governing document cannot be cured by the organization’s actual operations. Likewise, an organization

| | | |
|--|-----------------------------|--|
| Form 886-A (. January 1994) | EXPLANATION OF ITEMS | Schedule number or exhibit |
| Name of taxpayer : ORG | Tax Identification Number | Year/Period ended December 31, 20XX |

whose activities are not within the statute will not qualify for exemption by virtue of a well written charter. Reg. 1.501(c)(3)-1(b)(1)(iv).

Operational Test:

- Section 1.501(c)(3)-1(d)(i) defines appropriate exempt purposes. An organization may be exempt as an organization described in section 501(c)(3) if it is organized and operated exclusively for one or more of the following purposes:
 - religious
 - charitable
 - scientific
 - testing for public safety
 - literary
 - educational
 - fostering national or international sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment)
 - prevention of cruelty to children or animals.
- Reg. 1.501(c)(3)-1(c)(1) provide that an organization is operated exclusively for charitable purposes only if engages primarily in activities that accomplish those purposes in (1)above. It is not so operated if more than an insubstantial part of its activities do not further those purpose

Burden of Proof:

The court in Church of Spiritual Technology v. United States, 510 U.S. 870, 114 S.Ct. 197 (Mem) U.S., 1993, cited a long line of authority holding that the applicant bears the burden of showing it is entitled to exemption. In Harding Hospital, Inc. v. United States, 505 F.2d 1068, 1071 (6th Cir. 1974), the court stated that “[1]income tax exemption must be strictly construed, with any doubts to be resolved in favor of the taxing entity. Consequently, determinations of the Commissioner are presumed correct.”

Similarly, the court cited Welch v. Helvering, 190 U.S. 111, 115 (1933), and modern cases following its structure that “[P]laintiff thus bears the burden of proving its entitlement to an exemption.”

The Tax Court has consistently stated that a statute creating an exemption must be strictly construed and any doubt must be resolved in favor of the taxing power. Harding Hospital, Inc. v. United States of America, 505 F.2d. 1068, 34 A.F.T.R.2d 74-6174, 74-2 USTC.

Taxpayer's Position:

As of the date of this letter ORG, has not responded to our attempts to conduct an examination of their financial and operational activities.

Government Position:

| | | | |
|--|-----------------------------|---------------------------|--|
| Form 886-A (. January 1994) | EXPLANATION OF ITEMS | | Schedule number or exhibit |
| Name of taxpayer : ORG | | Tax Identification Number | Year/Period ended December 31, 20XX |

Since we have been unable to locate ORG, they have failed to furnish the information necessary to conduct an examination of its financial and operational activities which in turn is used to determine there continuing qualification for tax exempt status. Organizations seeking to obtain or maintain tax exempt status under section 501(c)(3) of the IRC must meet two basic tests. These organizations must be both organized and operated for 501(c)(3) purposes which ORG failed to demonstrate.

Conclusion:

Based on the above we have determined that your organization has failed the operational test under section 501(c)(3) of the Internal Revenue Code. Therefore, ORG, no longer qualifies for tax exempt status, effective January 1, 20XX. This is the first day of the tax period in which the organization fails to qualify for exemption under IRC 501(c)(3) of the Code. Also, as of January 1, 20XX contributions are no longer deductible as charitable contributions. In addition, ORG will be required to file 1120, U.S. Corporation Income Tax Return Form 1120 for all periods subsequent to December 31, 20XX.

CC